



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

July 14, 1994

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Reply To
Attn Of: HW-113

Craig S. Trueblood
Preston, Thorgrimson, Shidler, Gates & Ellis
Attorneys at Law
1400 Seafirst Financial Center
West 601 Riverside Avenue
Spokane, Washington 99201-0636

Re: Petition for Partial Delisting of the Pasco Sanitary
Landfill Site

Dear Mr. Trueblood:

This letter is in response to your Petition to remove the northern 52 acres of the Pasco Sanitary Landfill Site (Site) from the National Priorities List (NPL), dated January 14, 1994. Your petition makes two requests. First, it requests that the Site boundaries currently contemplated by the EPA be amended to reflect your contention that the "northern 52 acres" of the Site were found to be free of contamination based on information developed for the State of Washington. Second, it requests that the NPL be amended to reflect the change in the boundaries.

On February 7, 1994, Bill Glasser and Lynda Priddy of EPA met with you to discuss your request. At that meeting EPA explained the Agency's reasons for being unable to grant your petition for a partial delisting of the northern 52 acres of the Pasco site. However, in that meeting we agreed to state in a letter the reasons EPA is unable to partially delist any portion of any site from the NPL. Please find that response below.

EPA cannot amend the NPL to reflect a changed boundary because no boundary was set in the first place. Sites are generally listed on the NPL prior to the detailed investigation of a Remedial Investigation/Feasibility Study (RI/FS). Consequently, there is generally a great deal of uncertainty about where the contamination "has come to be located". The location of the contamination is important because EPA views the boundaries of a site as it is defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA defines a facility broadly as any area where a hazardous substance release has "come to be located". 42 USC 9601(9)(B). Thus, if contamination "has come to be located" in an area, then it is part of the facility. If contamination has not "come to be located" in an area, then it is not a part of the facility.

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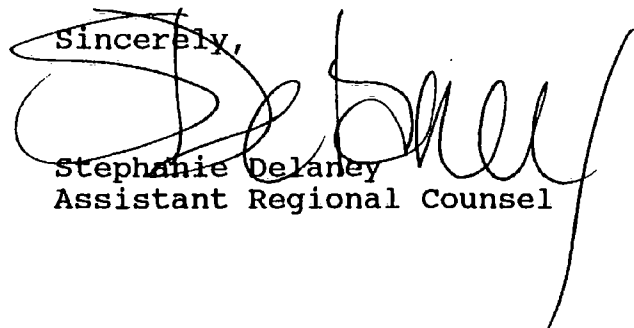
It is the Agency's position on site or facility boundaries is that "the NPL does not describe releases in precise geographical terms, and that it would be neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for it to do so." Federal Register, 55:35 [21 Feb. 1990] p.6156, attached. Because of the uncertainty about the site boundaries, "the Agency does not formally define the geographic extent of releases [or sites] at the time of listing, [and] there is no administrative process to 'delist' allegedly uncontaminated areas of an NPL site. . . ." Id.

Another reason the NPL does not define sites by geographical boundaries is to minimize administrative burdens so that resources can be focused on site cleanup. Specifically, EPA reasoned if the NPL were designed to define sites on the NPL by geographical boundaries thousands of petitions exactly like yours would be submitted to EPA requesting site boundary redefinition every time new data demonstrated that a portion of the site was free from contamination. Thus a site listing process based on geographical boundaries would "be time-consuming, subject to constant reverification, and wasteful of resources" that could be better used for site cleanup. Id. Consequently, EPA saves itself and the regulated community from needless waste by simply identifying the Site by name and leaving the exact definition of the facility to be defined in the Record of Decision (ROD) after all expected investigative work has been completed.

As you know, the Washington State Department of Ecology (Ecology) is cleaning up the Pasco Landfill Site under the Model Toxics Control Act and has listed the site on Ecology's Hazardous Sites List. According to an agreement between EPA and Ecology, the State is the lead agency for the site and EPA will not review or make determinations about data developed from the site until after the state-lead cleanup has been completed. Nor will EPA conduct it's own RI/FS or ROD. EPA decide only after the cleanup is complete whether the site should be delisted from the NPL.

There are a number of other landfills in the State of Washington and around the country, such as the Hidden Valley Landfill in Pierce County that have continued to operate after being placed on the NPL. You may want to contact them to see how they have addressed concerns about NPL liability. If you have any further questions please feel free to contact me.

Sincerely,



Stephanie Delaney
Assistant Regional Counsel

cc: Guy Gregory, WDOE